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UNCLAS SECTION 01 OF 02 KUALA LUMPUR 000331

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STATE PASS USTR FOR B. WEISEL  
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COMMERCE PASS PTO FOR FOWLER

E.O. 12958: N/A

TAGS: KIPR ETRD MY

SUBJECT: TRADE MINISTER SHAFIE ON IPR AND DISTRIBUTIVE SERVICES REGULATIONS

¶11. (SBU) Summary: Minister of Domestic Trade Shafie Apdal and Ambassador LaFleur discussed IPR enforcement, planned new regulations on distributive trade, and the security situation in eastern Sabah state. The Ambassador emphasized that both IPR and distributive trade would be significant issues should the U.S. and Malaysia begin negotiations on a FTA. Shafie noted plans for a special IPR court and legal changes that would allow action against owners of premises where pirated IPR is traded. However, he said political pressures would require him to initiate problematic changes in distributive trade regulations. Discussion of East Sabah will be reported septel. End Summary.

¶12. (SBU) Ambassador LaFleur, accompanied by economic counselor and trade officer, called on Minister of Domestic Trade and Consumer Affairs (MDTCA) Shafie Apdal February 24. Also present were Under Secretary Lee Kam Swee and Principal Assistant Secretary Surrendren Sthasivam of MDTCA's Planning and Development Division. The Ambassador raised two issues that would be top priorities for the U.S. should it begin negotiations on a FTA with Malaysia: IPR enforcement and MDTCA plans for changes to Malaysian regulations covering distributive trade.

#### Intellectual Property Rights Enforcement

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¶13. (SBU) The Ambassador congratulated Shafie on the steps he had taken so far to strengthen Malaysia's protection of intellectual property. He asked if Shafie had come to an agreement with the Attorney General on the proposed special IPR court. Shafie said both the Attorney General and Malaysia's Chief Judge have agreed to designate a court within Malaysia's existing system that would have special competence for IPR cases. He said he wanted to expedite prosecution of IPR cases to send a good signal to industry. Shafie noted that he had created an intelligence unit within MDTCA staffed with police investigators that already is producing results. He said this unit was responsible for launching piracy cases against four licensed optical disc factories, two in Kuala Lumpur and two in Johor Bahru. The unit works closely with industry representatives, such as those of the Motion Picture Association (MPA). Shafie promised that "there will be more (cases) to come."

¶14. (SBU) The Ambassador referred to a recent press report that Shafie was seeking authority for his ministry to take action against owners of malls and other retail outlets where pirated IPR is widely available. Shafie said that retail property licenses are issued by local governments in Malaysia, but that he is seeking changes to the law to give

his Ministry the power to shut down repeat offenders. In the meantime, MDTCA is reaching out to local officials to persuade them to take action themselves. The Ambassador suggested MDTCA consider sponsoring a voluntary campaign in which mall owners would forbid the sale of pirated IPR on their premises and promote this step to upscale customers who want bona fide goods and who wish to stay within the law. Shafie said he would consider the idea.

**¶15.** (SBU) The Ambassador reminded Shafie of a letter he sent him in December about a piracy case involving the computer games firm Electronic Arts (EA). Economic counselor provided the Minister with a copy and Shafie asked his staff to look into the matter. The Ambassador asked Shafie if there was a way for MDTCA to take immediate action against licensed optical disc lines when there was solid evidence that they were engaged in piracy. Shafie responded that the firms were able to obtain legal injunctions against an action to revoke a license prior to a conviction. He said he had obtained a ruling from the Attorney General that gave him administrative authority to pull a license, but that he wanted to change the law so that he would have clear legal authority.

**¶16.** (U) The Ambassador raised the proposed U.S.-Malaysia IPR Roundtable, now tentatively scheduled for April 20, and urged Shafie to participate, if only to deliver opening remarks. Shafie said he hoped he could. He also said he wished Malaysian artists would do more to discourage the purchase of pirated goods.

#### Distributive Trade Regulations

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**¶17.** (U) NOTE: For the Malaysian government, distributive trade refers to the distribution, marketing and retailing of

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goods after their manufacture or importation into Malaysia. It also covers some businesses that provide direct services to consumers, such as restaurants. Malaysian government authorities are still interpreting the range of commercial activities that will be covered by the new distributive trade regulations.

**¶18.** (SBU) The Ambassador emphasized that many of the measures that reportedly would be covered under MDTCA's new distributive trade regulations would run counter to what the U.S. would like to see should we decide to negotiate a FTA. These include rules that would force firms to establish separate production and distribution arms, and otherwise rearrange their corporate structures. Particularly problematic would be the proposed rules requiring that 30 percent of the equity in distributive trade operations be held by bumiputera (ethnic Malay) shareholders. The Ambassador suggested that MDTCA defer implementation of the new regulations pending a decision on the FTA negotiations. He observed that it would make things easier for U.S. and Malaysian negotiators if they could deal with proposals, rather than regulations in force.

**¶19.** (SBU) Shafie said he realized that the distributive trade regulations caused issues for some parties, but stressed that he is under considerable pressure, including from other Cabinet members, to release them now. He argued that many businesses want certainty so they can make plans for the future and that the current situation is awkward for everyone. He said he had discussed the impact on foreign investors with Minister of International Trade and Industry Rafidah Aziz, but told her that the "discrepancies" needed to be raised in Cabinet. He concluded that he was given a deadline by the Cabinet to implement the new regime and intended to meet it.

LAFLEUR